

[1] UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
[2]  
[3] UNITED STATES OF AMERICA,  
[4] v. 97 CR 00097-01 (LMM)  
[5] BARRY TRUPIN,  
[6] Defendant.

[7]  
[8] August 16, 1999  
9:39 a.m.

[9] Before:

[10] HON. LAWRENCE M. MCKENNA

[11] District Judge  
[12] - and a jury -

[13] APPEARANCES

[14] MARY JO WHITE  
United States Attorney for the  
[15] Southern District of New York  
BY: STEPHEN RITCHIN  
[16] LYNN NEILS  
Assistant United States Attorney

[17] THOMAS P. PUCCIO  
[18] Attorney for Defendant  
[19] Also Present: Patrick Scutero  
Guy Ficco

[20]  
[21]  
[22]  
[23]  
[24]  
[25]

Page 5644

Page 5645

[1] (Trial resumed; jury not present)  
[2] THE COURT: Good morning.  
[3] MR. PUCCIO: Good morning, your Honor.  
[4] THE COURT: I guess what we agreed we would do,  
[5] at least what we talked about doing Friday as far as the  
[6] jury is concerned, is as follows. After I charge the jury,  
[7] I will instruct them, either leaving them in the courtroom,  
[8] Mina can watch them or putting them in the jury room, that's  
[9] a secondary question. We will interview very briefly those  
[10] jurors as to whom there is some sort of a problem, and then  
[11] make a determination as to who is released.  
[12] MR. RITCHIN: I thought we said we were just to  
[13] just interview Mr. Cunningham who has the problem.  
[14] THE COURT: Is that correct?  
[15] MR. PUCCIO: That's where we left off on Friday,  
[16] Judge. While reflecting on this over the weekend, I  
[17] requested you interview all jurors on this issue of timing  
[18] because we are now a month beyond where they were  
supposed  
[19] to be, and I think it is not in my client's interest to have  
[20] a rush to judgment here in this complicated case.  
[21] THE COURT: I agree with that. But we have  
[22] interviewed jurors about their time problems, and nobody  
[23] except a couple have indicated any forthcoming problem. To  
[24] suggest problems to them —  
[25] MR. PUCCIO: No, I'd just like to feel

Page 5646

[1] comfortable that the jury is willing to be here as long as  
[2] they have to be here, and I think in light of — on the  
[3] whole record, considering we are so far behind here in terms  
[4] of scheduling, I would ask that every one of the jurors be  
[5] interviewed on the timing issue.  
[6] MR. RITCHIN: Judge —  
[7] THE COURT: What happens if people have problems?  
[8] MR. PUCCIO: I think then we have to talk about  
[9] it. I'm not sure. I'd rather know now than hear later,  
[10] after an adverse verdict, that people had to get out of  
[11] there for this, that or the other thing. I just think it is  
[12] a very bad situation for Mr. Trupin to be in where people  
[13] are anxious to get out of here.  
[14] THE COURT: Yes, but I don't understand the  
[15] reason for interviewing jurors who have never suggested a  
[16] problem.  
[17] MR. PUCCIO: I just think we are so far beyond  
[18] where we were going to be that that is something that is  
[19] prudent to do. I would make that request.  
[20] MR. RITCHIN: Judge, the jurors have been  
[21] interviewed on several occasions about the scheduling and  
[22] have been asked on several occasions to raise issues if they  
[23] have issues about scheduling. I don't think there is any  
[24] need at this point, nor would it be appropriate, to go juror  
[25] by juror and ask people, Do you now have a problem. The

[1] last thing we told them was that we expected to conclude the  
 [2] presentation of the evidence by August 19. Today is August  
 [3] 16. So we are within that schedule, and I don't see any  
 [4] reason to do what Mr. Puccio is suggesting.

[5] **THE COURT:** I agree. I don't see any need to  
 [6] interview the entire jury. So, to the extent that is an  
 [7] application by Mr. Puccio, it is denied.

[8] My question was, just going over this and  
 [9] thinking a lot about it over the weekend, maybe there is no  
 [10] need for this. Maybe we should simply, since they are  
 [11] adults, take them at their word and assume that Mr. Coleman  
 [12] is available for Monday, Tuesday — today, Tuesday and  
 [13] Wednesday, and that Ms. Kimmerling is available all week.

[14] **MR. RITCHIN:** My recollection of Mr. Coleman's  
 [15] schedule is he didn't have a problem until Friday, that he  
 [16] was going to be gone Friday to Monday.

[17] **THE COURT:** Let me see. I thought it was  
 [18] Thursday through Monday. That could be confirmed with him  
 [19] very briefly. My original notes go back a ways. They  
 [20] indicate that his planned vacation began on Thursday. That  
 [21] could be confirmed.

[22] **MS. NEILS:** I believe it was Thursday night,  
 [23] Judge, is my recollection, too.

[24] **THE COURT:** Maybe Thursday night. We can  
 [25] certainly confirm that.

[1] have another person —

[2] **THE COURT:** Right.

[3] **MR. PUCCIO:** I think that ought to be explored

[4] because I don't think —

[5] **THE COURT:** I have no problem with confirming

[6] that with that juror.

[7] **MR. PUCCIO:** Confirming what, that —

[8] **THE COURT:** That it is, in fact, Thursday night

[9] that he is planning to leave for the Caribbean. He also

[10] said — we can confirm this — that vacation only lasts till

[11] Monday, so that if deliberations were extended through

[12] Thursday, whenever he has to leave, we could resume again

[13] next week on Tuesday with him.

[14] **MR. PUCCIO:** He's only going to be gone —

[15] **THE COURT:** That's what he said.

[16] **MR. PUCCIO:** — two days?

[17] **MR. RITCHIN:** It was a long weekend, is my

[18] recollection, he was going to be out Friday and Monday, but

[19] coming back.

[20] **MR. PUCCIO:** I would still like it explored. How

[21] about the lady who is leaving, can't deliberate after

[22] Friday?

[23] **THE COURT:** Yes.

[24] **MR. PUCCIO:** Could we explore that as well?

[25] **THE COURT:** I can confirm that. I have no

[1] **MR. RITCHIN:** I think where we left off on Friday  
 [2] was the only person who had an immediate problem or  
 [3] potential immediate problem —

[4] **THE COURT:** Was Cunningham.

[5] **MR. RITCHIN:** — was Mr. Cunningham. I think it  
 [6] makes sense to talk to him. But to go beyond that, I think  
 [7] maybe it will invite problems which won't necessarily occur.  
 [8] I would request we speak with the other people that say  
 [9] they're going on vacation as well.

[10] **THE COURT:** One of them we know is going on  
 [11] vacation, that's Ms. Kimmerling. She doesn't start until  
 [12] next week end. Her vacation begins, according to her  
 [13] original inclination, a week from today. That's August 23.

[14] **MR. PUCCIO:** Judge, I do think in a case this  
 [15] long it is not unusual for a jury to deliberate one day for  
 [16] every week of trial, and that would take us beyond there.

[17] So I would ask that anybody who has a vacation planned who  
 [18] is capping this at a certain period should be talked to.

[19] **THE COURT:** But I think we have all their — we  
 [20] told them that we expected to go through August 19, and we  
 [21] only have the problems that have already — basically this  
 [22] is something we have already done. You can't go and ask  
 [23] them, Are you available on Christmas eve.

[24] **MR. PUCCIO:** No, Judge, we have people — one  
 [25] person who can only deliberate until Thursday night, and we

[1] problem confirming it.

[2] **MR. PUCCIO:** Wouldn't it also be important to  
 [3] confirm that if you have to deliberate past Friday, then  
 [4] that's what you're basically agreeing to if you're part of  
 [5] this jury?

[6] **THE COURT:** I don't want to make any suggestions  
 [7] to them about how long they should deliberate. What I  
 [8] always tell jurors is how long you deliberate is the jury's  
 [9] business, which it is.

[10] **MR. PUCCIO:** You're not making a suggestion if  
 [11] you say just that. It's the jury's business.

[12] **THE COURT:** Right.

[13] **MR. PUCCIO:** But it's not inconceivable —

[14] **THE COURT:** I could ask you informationally, what  
 [15] happens, should it be the case, the jury is deliberating  
 [16] after this week.

[17] **MR. PUCCIO:** I would ask that, I would like that  
 [18] question to be asked.

[19] **THE COURT:** Everything I ask a juror I'm going to  
 [20] preface with a statement, the obvious —

[21] **MR. PUCCIO:** You're not telling them what to do.

[22] **THE COURT:** — A, that I don't want them to tell  
 [23] me anything about what they think about the case; B, I don't  
 [24] want them to tell me anything they think about how long  
 [25] deliberations might take; and C, that I'm not suggesting

[1] an affirmative act.  
 [2] THE COURT: Right.  
 [3] MR. PUCCIO: There's one other minor difference,  
 [4] which, on this record, doesn't mean anything, which is that  
 [5] 7203 talks about pay when due and 7201 talks about  
 [6] deficiency. Deficiency is like conceded here so that  
 [7] becomes a total nonevent in this case. The only difference  
 [8] is they could find on this record that the government didn't  
 [9] make out the affirmative act element and, therefore, it  
 [10] should be a lesser included offense and that's the only  
 [11] difference and I can't imagine what the government would say  
 [12] in summation any differently. They would say, well, there  
 [13] was an affirmative act here. So the government's not  
 [14] prejudiced, No. 1, and, No. 2, the Court has the authority  
 [15] to do it.  
 [16] MR. RITCHIN: To fill out what Mr. Puccio can't  
 [17] imagine we would say, I mean, we would address the issue of  
 [18] which is the appropriate crime, which is not an issue that  
 [19] we addressed because it wasn't in the case at the time of  
 [20] summations.  
 [21] THE COURT: I better look at this Watson case, I  
 [22] guess. I'm glad Mr. Coleman's late, at least they won't  
 [23] blame this on me or either side.  
 [24] (Recess)  
 [25] MR. PUCCIO: Judge, I have no objection to your

[1] putting in there that the government believes the lesser  
 [2] included offense is inappropriate in this case.  
 [3] THE COURT: No, I'm not going to give it. I read  
 [4] the Watson case, which is a D.C. Circuit case and I think  
 [5] it's page 1345 as opposed to 1445 and the dissenter, which  
 [6] was Judge Mickler, doesn't address the belated — as the  
 [7] majority calls it, belated charge request. The rule does  
 [8] require that the parties know what the charge is prior to  
 [9] openings. That's the general rule.  
 [10] MR. RITCHIN: Your Honor, I think you meant  
 [11] closings. You just said openings.  
 [12] THE COURT: I'm sorry. You will notice I do that  
 [13] routinely. Before closings. And it is something that I  
 [14] raised some while ago, so there's no surprise element here  
 [15] and I think it would be inappropriate at this stage of the  
 [16] game when arguments have been completed and there's no  
 [17] opportunity for further closings at this point to include  
 [18] the lesser included charge, although I believe under the  
 [19] McGill case, and Mr. Puccio has given me some citations in  
 [20] furtherance for including it, it would be appropriate if  
 [21] requested, I believe in all probability if I went through  
 [22] those other cases I would have found that 7203 can be an  
 [23] included offense in a 7201 charge, but I think the timing of  
 [24] it, after closings, makes it inappropriate to include.  
 [25] One other thing I wanted to say —

[1] MR. PUCCIO: Judge, I would request each side be  
 [2] given another ten minutes to address this issue, which would  
 [3] cure that problem if in fact there is such a problem.  
 [4] THE COURT: Again, I don't think to reopen the  
 [5] closings at that point would be appropriate. This is  
 [6] something that I think could have been done some while ago,  
 [7] so I'm going to proceed to charge the jury.  
 [8] One other thing. We had the date wrong,  
 [9] Ms. Brooks has on the 19th, which is Thursday, a 4 o'clock  
 [10] appointment.  
 [11] THE DEPUTY CLERK: Wednesday is the 19th.  
 [12] MR. PUCCIO: Thursday is the 19th.  
 [13] MR. RITCHIN: The 19th is Thursday.  
 [14] THE MARSHAL: I'm pretty sure she said Wednesday.  
 [15] THE COURT: I will take judicial notice that the  
 [16] 18th is Wednesday and the 19th is Thursday. That I know.  
 [17] THE DEPUTY CLERK: I didn't get my dates right.  
 [18] I did write down Wednesday. I'm sorry, Judge. I can't seem  
 [19] to get my dates right. She did say Wednesday.  
 [20] THE MARSHAL: Wednesday the 18th.  
 [21] THE COURT: Okay. And then on the 23rd, she has  
 [22] a hearing date, but the 23rd is a week from today, if we  
 [23] were to go that long, Mr. Coleman would be unavailable, so  
 [24] that would be a day we would have to refrain from  
 [25] deliberations so that we would have the requisite number of

[1] jurors. So the application to include a lesser offense  
 [2] charge is denied. The defendant has an exception.  
 [3] MR. RITCHIN: I'm sorry. Ms. Neils just stepped  
 [4] out.  
 [5] THE COURT: Let's get Ms. Neils then.  
 [6] (In open court; jury present)  
 [7] THE COURT: Good morning. Just a couple of  
 [8] prefatory things. First, I have, as you probably noticed  
 [9] already, a bad habit of dropping my voice. Should I do  
 [10] that, please feel free to stick your hand up if I start  
 [11] speaking too quietly and I'll try to stay near the  
 [12] microphone. Secondly, I just want to personally thank you  
 [13] for your patience with us in this case which has extended  
 [14] about four weeks longer than what we told you during jury  
 [15] selection. I know this has inconvenienced all of you  
 [16] personally. I'm sure it's had its impact on people's  
 [17] families and peoples' employers, and you've been very good  
 [18] about that and I personally thank you and I think everybody  
 [19] in this courtroom thanks you. Please don't blame the delays  
 [20] on either side. That would be very unfair. These things  
 [21] happen in cases and it happened in this case, but don't  
 [22] blame either the government or the defendant for the delays.  
 [23] I also want to thank you on behalf of everybody  
 [24] involved in this case, the government, the defendant,  
 [25] counsel on both sides, and myself, for the attention you

[1] have paid throughout the case.  
 [2] You will very soon leave the courtroom and begin  
 [3] discussing this case in the jury room.  
 [4] The government has accused the defendant,  
 [5] Mr. Trupin, of two crimes, attempting to evade the payment  
 [6] of income taxes and making a false statement to the Internal  
 [7] Revenue Service.  
 [8] Please remember that these are only charges. In  
 [9] order for you to find Mr. Trupin guilty, you must be  
 [10] convinced beyond a reasonable doubt that he committed these  
 [11] crimes as charged. If you are not convinced beyond a  
 [12] reasonable doubt that he committed the crimes charged, you  
 [13] must find him not guilty.  
 [14] During the course of the trial you received all  
 [15] the evidence you may properly consider to decide the case.  
 [16] Your decision in this case must be based solely on the  
 [17] evidence presented at the trial. Do not be concerned with  
 [18] whether evidence is direct evidence or circumstantial  
 [19] evidence. You should consider all the evidence that was  
 [20] presented to you, except, of course, any evidence that I  
 [21] ordered stricken.  
 [22] The lawyers, in their closing arguments, have  
 [23] suggested that you draw inferences, on the basis of your  
 [24] reason, experience, and common sense, from one or more  
 [25] established facts, to the existence of some other fact.

[1] An inference is not a suspicion or a guess. It  
 [2] is a reasoned, logical decision to conclude that a disputed  
 [3] fact exists on the basis of another fact which you know  
 [4] exists.  
 [5] There are times when different inferences may be  
 [6] drawn from facts, whether proved by direct or circumstantial  
 [7] evidence. The government asks you to draw one set of  
 [8] inferences, while the defense asks you to draw another. It  
 [9] is for you, and you alone, to decide what inferences you  
 [10] will draw.  
 [11] The process of drawing inferences from facts in  
 [12] evidence is not a matter of guesswork or speculation. An  
 [13] inference is a deduction or conclusion which you, the jury,  
 [14] are permitted to draw — but not required to draw — from  
 [15] the facts which have been established by either direct or  
 [16] circumstantial evidence. In drawing inferences, you should  
 [17] exercise your common sense.  
 [18] While you are considering the evidence presented  
 [19] to you, you are permitted to draw, from the facts which you  
 [20] find to be proven, such reasonable inferences as would be  
 [21] justified in light of your experience.  
 [22] Here again, let me remind you that, whether based  
 [23] upon direct or circumstantial evidence, or upon the logical,  
 [24] reasonable inferences drawn from such evidence, you must be  
 [25] satisfied of the guilt of the defendant beyond a reasonable

[1] doubt before you may convict.  
 [2] Let me emphasize that a lawyer's question is not  
 [3] evidence. At times, a lawyer may have incorporated into a  
 [4] question a statement which assumed certain facts to be true  
 [5] and asked the witness if the statement was true. If the  
 [6] witness does not testify that the statement is true, and if  
 [7] there is no evidence in the record proving that the assumed  
 [8] fact is true, then you may not consider that fact to be true  
 [9] simply because it was contained in the lawyer's question.  
 [10] In short, questions are not evidence; it is the  
 [11] answer to a question, in light of what the question was,  
 [12] that is evidence.  
 [13] At times during the trial you heard lawyers  
 [14] object to questions or to answers by witnesses. This simply  
 [15] means that the lawyers were requesting that I make a  
 [16] decision on a particular rule of law. Do not draw any  
 [17] conclusions from such objections or from my rulings on the  
 [18] objections. These only related to the legal questions that  
 [19] I had to determine and should not influence your thinking.  
 [20] When I sustained an objection to a question, the  
 [21] witness was not allowed to answer it. Do not attempt to  
 [22] guess what answer might have been given had I allowed the  
 [23] question to be answered.  
 [24] Similarly, when I told you not to consider a  
 [25] particular answer or if I granted a motion to strike certain

[1] testimony, put that answer or testimony out of your mind.  
 [2] You may note consider it in your deliberations.  
 [3] As to certain evidence, I told you it might be  
 [4] considered for only a limited purpose, such as for the state  
 [5] of mind of a person. You must only consider such evidence  
 [6] for the purpose for which I told you the evidence was  
 [7] admitted.  
 [8] Sometimes, I think very rarely in this case, I  
 [9] may have asked questions of witnesses. If I asked  
 [10] questions, that did not indicate I had any opinion about the  
 [11] facts of this case. I do not. The determination of the  
 [12] facts is your job. It is my job to decide what rules of law  
 [13] apply to the case. I have explained some of these rules to  
 [14] you during the course of the trial and I will explain others  
 [15] of them to you before you go into the jury room. That's my  
 [16] job. It's not the job of the lawyers. So while the lawyers  
 [17] may have commented during the trial or in closings on some  
 [18] of these rules, you are to be guided only by what I say  
 [19] about them.  
 [20] You must follow all of the rules as I explain  
 [21] them to you. You may not follow some and ignore others.  
 [22] Even if you disagree or don't understand the reasons for  
 [23] some of the rules, you are bound to follow them.  
 [24] If you decide that the government has proved  
 [25] beyond a reasonable doubt that Mr. Trupin is guilty of the

[1] crimes charged, it will also be my job to decide what the  
 [2] punishment should be. You should not try to guess what the  
 [3] punishment might be. It should not enter into your  
 [4] consideration or discussions at any time.

[5] The decisions you reach in the jury room, whether  
 [6] guilty or not guilty, must be unanimous as to each count.  
 [7] You must all agree. Your deliberations will be secret. You  
 [8] will never have to explain your verdict to anyone.

[9] It is your duty as jurors to talk with one  
 [10] another and to deliberate in the jury room. You should try  
 [11] to reach an agreement if you can. Each of you must decide  
 [12] the case for yourself, but only after consideration of all  
 [13] the evidence with other members of the jury. While this is  
 [14] going on, do not hesitate to reexamine your own opinions and  
 [15] change your mind if you are convinced that you are wrong.  
 [16] But do not give up your honest beliefs solely because the  
 [17] others think differently or merely to get the case over  
 [18] with.

[19] In a very real sense, you are the judges, judges  
 [20] of the facts. Your only interest is to determine whether  
 [21] the government has proved Mr. Trupin guilty beyond a  
 [22] reasonable doubt.

[23] As I explained to you earlier, Mr. Trupin is on  
 [24] trial here because the government has charged that he  
 [25] committed the federal crimes of attempting to evade the

[1] and common sense, a kind of doubt that would make a  
 [2] reasonable person hesitate to act. Proof beyond a  
 [3] reasonable doubt must, therefore, be proof of such a  
 [4] convincing character that a reasonable person would not  
 [5] hesitate to rely and act upon it in the most important of  
 [6] his or her own affairs. The jury will remember that a  
 [7] defendant is never to be convicted on mere suspicion or  
 [8] conjecture.

[9] The burden is always upon the prosecution to  
 [10] prove guilt beyond a reasonable doubt. This burden never  
 [11] shifts to a defendant. The law never imposes upon a  
 [12] defendant in a criminal case the burden or duty of calling  
 [13] any witnesses or producing any evidence. So if the jury,  
 [14] after careful and impartial consideration of all the  
 [15] evidence in the case, has a reasonable doubt that Mr. Trupin  
 [16] is guilty of the charges against him, it must acquit.

[17] Unless the government proves beyond a reasonable  
 [18] doubt that Mr. Trupin has committed each element of an  
 [19] offense with which he is charged, you must find him not  
 [20] guilty of that offense. What I have just said applies to  
 [21] each of the two offenses charged against Mr. Trupin in the  
 [22] indictment.

[23] There is, however, one — and only one — thing  
 [24] that the government must prove, not beyond a reasonable  
 [25] doubt, but only by a preponderance of the evidence, and that

Page 5692

[1] payment of income tax and of making a false statement to the  
 [2] Internal Revenue Service. I will soon define for you  
 [3] exactly what that means and what the government must prove.  
 [4] The only question you must answer is whether the government  
 [5] has proved beyond a reasonable doubt that Mr. Trupin  
 [6] committed the crimes charged. Your answer should be based  
 [7] solely on the evidence or lack of evidence, in accordance  
 [8] with my instructions.

[9] I want to take some time to explain proof beyond  
 [10] a reasonable doubt.

[11] The law presumes a defendant to be innocent of a  
 [12] crime. Thus, a defendant, although accused, begins the  
 [13] trial with a clean slate, with no evidence against him, and  
 [14] the law permits nothing but legal evidence to be presented  
 [15] before the jury to be considered in support of any charge  
 [16] against the accused.

[17] So the presumption of innocence alone is  
 [18] sufficient to acquit a defendant, unless the jurors are  
 [19] satisfied beyond a reasonable doubt of the defendant's guilt  
 [20] after careful and impartial consideration of all of the  
 [21] evidence in the case.

[22] It is not required that the government prove  
 [23] guilt beyond all possible doubt. The test is one of  
 [24] reasonable doubt.

[25] A reasonable doubt is a doubt based upon reason

[1] is what the law calls venue; that is, that some act in  
 [2] furtherance of each of the crimes charged occurred in the  
 [3] Southern District of New York. I will come back to this  
 [4] requirement later. The standard of proof by which the  
 [5] government must prove venue — by a preponderance of the  
 [6] evidence — means that the government must prove that it is  
 [7] more likely than not that some act in furtherance of each of  
 [8] the crimes charged occurred in the Southern District of New  
 [9] York. To prove that something is more likely the case than  
 [10] not is a much less stringent standard of proof than to prove  
 [11] something beyond a reasonable doubt.

[12] As I have just said, it is your job to decide if  
 [13] the government has proved the guilt of Mr. Trupin beyond a  
 [14] reasonable doubt. An important part of that job will be  
 [15] making judgments about the testimony of the various  
 [16] witnesses who testified in this case. You should decide  
 [17] whether you believe what each person had to say and how  
 [18] important that testimony was. In making that decision, I  
 [19] suggest that you may ask yourself a few questions: Did the  
 [20] person impress you as honest? Did he or she have any  
 [21] particular reason not to tell the truth? Did he or she have  
 [22] a personal interest in the outcome of the case? Did the  
 [23] witness seem to have a good memory? Did the witness have  
 [24] the opportunity and ability to observe accurately the things  
 [25] he or she testified about? Did he or she appear to

[1] understand the questions clearly and answer them directly?  
 [2] Did the witness' testimony differ from the testimony of  
 [3] other witnesses?

[4] These are a few of the considerations that will  
 [5] help you determine the accuracy of what each witness said.  
 [6] Some of the testimony before you is in the form  
 [7] of videotaped depositions which have been received in  
 [8] evidence. A deposition is simply the examination of a  
 [9] witness by the lawyers for the parties before trial. As in  
 [10] the case of a witness who testifies at trial, the witness  
 [11] testifies under oath. You should consider the testimony of  
 [12] a witness given in the form of a deposition according to the  
 [13] same standards for evaluating the testimony of a witness  
 [14] given at trial.

[15] You also heard the testimony of a witness — Tara  
 [16] Michaels — who has entered into an agreement with the  
 [17] government pursuant to which the government has agreed not  
 [18] to prosecute her for certain conduct if she cooperates with  
 [19] the government as set forth in the agreement.

[20] Ms. Michaels' agreement with the government does  
 [21] not mean there was any crime, and cannot be considered as  
 [22] evidence of criminal wrongdoing by anyone, including Ms.  
 [23] Michaels and Mr. Trupin.

[24] The government is entitled to call as witnesses  
 [25] persons with whom it has entered into such an arrangement,

[1] and you may convict a defendant on the basis of such a  
 [2] witness' testimony, if you find that that testimony proves  
 [3] that the defendant is guilty beyond a reasonable doubt.

[4] However, the testimony of such a witness should  
 [5] be examined by you with greater care than the testimony of  
 [6] an ordinary witness. You should scrutinize it closely to  
 [7] determine whether or not it is colored in such a way as to  
 [8] place guilt upon the defendant in order to further the  
 [9] witness' own interests, for such a witness, confronted with  
 [10] the realization that he or she can avoid prosecution by  
 [11] helping convict another, has a motive to falsify his or her  
 [12] testimony, even though the witness may also, under the  
 [13] agreement, have a motive to testify truthfully. It is for  
 [14] you to evaluate such a witness' motive.

[15] Such testimony should be scrutinized by you with  
 [16] great care and you should act upon it with caution. If you  
 [17] believe it to be true, and determine to accept the  
 [18] testimony, you may give it such weight, if any, as you  
 [19] believe it deserves.

[20] Mr. Trupin did not testify in this case. Under  
 [21] our Constitution, a defendant has no obligation to testify  
 [22] or to present any other evidence because it is the  
 [23] prosecution's burden to prove a defendant guilty beyond a  
 [24] reasonable doubt. That burden remains with the prosecution  
 [25] throughout the entire trial and never shifts to the

[1] defendant. The defendant is never required to prove that he  
 [2] is innocent.

[3] The right of the defendant not to testify is an  
 [4] important part of our Constitution. As the Supreme Court of  
 [5] the United States has said, and I am quoting now from it:  
 [6] "It is not everyone who can safely venture on the witness  
 [7] stand. Though entirely innocent of the charge against him,  
 [8] excessive timidity, nervousness when facing others and  
 [9] attempting to explain transactions of a suspicious character  
 [10] may only increase rather than remove any prejudice against  
 [11] him. It is not everyone, however honest, who would  
 [12] therefore willingly be placed on the witness stand."

[13] You may not attach any significance to the fact  
 [14] that Mr. Trupin did not testify. No adverse inference  
 [15] against him may be drawn by you because he did not take the  
 [16] witness stand. You may not consider this against him in any  
 [17] way in your deliberations in the jury room.

[18] In making up your mind in reaching a verdict, you  
 [19] cannot make any decisions simply because there are more  
 [20] witnesses on one side than on the other. Do not reach a  
 [21] conclusion on a particular point just because there were  
 [22] more witnesses testifying for one side on that point. Your  
 [23] job is to think about the testimony of each witness you  
 [24] heard and decide how much, if anything, you believe of what  
 [25] he or she had to say.

[1] Let me turn now to the specific charges in this  
 [2] case as alleged by the government in the indictment. First  
 [3] I will read the indictment to you, with the reminder of what  
 [4] I already told you: that the indictment is not evidence of  
 [5] anything. It is just a procedural device for bringing  
 [6] before you the question of whether or not the government has  
 [7] proved the defendant's guilt of the crimes charged beyond a  
 [8] reasonable doubt.

[9] The indictment reads as follows: Count 1, and  
 [10] there is sort of a heading here, under count 1, that says  
 [11] "Evasion of payment of income taxes," and then under that  
 [12] there is a heading that says "Background, Trupin is assessed  
 [13] more than \$6 million in back taxes."

[14] The indictment is written in numbered paragraphs,  
 [15] and I will read the numbers to you: "1. Between 1980 and  
 [16] 1986, Barry Trupin, the defendant, resided in New York, New  
 [17] York. He described himself as being an executive. That's  
 [18] in quotes. For the year 1980, Trupin filed a personal  
 [19] income tax return jointly with his first wife. For each of  
 [20] the years 1982 through 1986, Trupin filed a personal income  
 [21] tax return jointly with his second wife. For 1981, Trupin  
 [22] filed singly.

[23] "2. In or about the middle 1980s, the Internal  
 [24] Revenue Service," there's an indication that that will  
 [25] thereafter be referred to simply as IRS, "located in New

Page 5699

[1] York, New York, commenced auditing the personal income tax  
[2] returns of Barry Trupin, the defendant, for the years 1980  
[3] through 1986. Commencing in or about 1991 and continuing  
[4] through in or about 1992, after considering appeals by  
[5] Trupin, the IRS determined that Trupin owed additional taxes  
[6] for each of these years." And there's an indication that  
[7] that will thereafter be referred to as the tax deficiencies.  
[8] "The tax deficiencies as determined by the IRS were as  
[9] follows," and there are two columns giving a tax year and  
[10] the tax deficiency. And they read as follows: 1980,  
[11] \$527,550. 1981, \$787,117. 1982, \$503,139. 1983, \$433,704.  
[12] 1984, \$1,265,273. 1985, \$2,939,540. 1986, \$215,003.

[13] "3. Commencing in or about November 1991 and  
[14] continuing through in or about December 1992, Barry Trupin,  
[15] the defendant, filed petitions in United States Tax Court to  
[16] protest the tax deficiencies for each year except 1981. In  
[17] or about January 1992, the IRS assessed the sum of \$787,117  
[18] against Trupin for the year 1981.

[19] "4. On or about October 26, 1993, Barry Trupin,  
[20] the defendant, submitted to the IRS," and this is in quotes,  
[21] "an Offer in Compromise and an accompanying," also in  
[22] quotes, "Collection Information Statement for individuals,  
[23] in which he listed his purported assets and liabilities.  
[24] Trupin's purpose in submitting these documents was to  
[25] attempt to induce the IRS to accept \$385,000 to be paid,

Page 5700

[1] over a ten-year period, to settle his entire tax liability,  
[2] which he acknowledged exceeded \$3 million. In the  
[3] Collection Information Statement, which he certified under  
[4] oath was true, Trupin falsely claimed, among other things,  
[5] that his only assets were \$500 in cash and a \$48,000 line of  
[6] credit. In fact, as Mr. Trupin then and there well knew, he  
[7] had control over, and used for his personal benefit,  
[8] millions of dollars of property in cash. On or about  
[9] November 4, 1993, the IRS rejected Trupin's Offer in  
[10] Compromise.

[11] "5. On or about November 29, 1993, Barry Trupin,  
[12] the defendant, failed to appear in the United States Tax  
[13] Court for the scheduled trial relating to his petitions. As  
[14] a result, on December 28, 1993, default judgments were  
[15] entered against him for the year 1980 and the years 1982  
[16] through 1986. The total amount of those default judgments  
[17] was \$5,894,209. Accordingly, as of December 28, 1993,  
[18] Trupin owed a total of \$6,681,326 in federal income taxes  
[19] for the years 1980 through 1986."

[20] Now, there is another heading: "Trupin's scheme  
[21] to evade payment of the income tax assessed against him.  
[22] "6. Commencing in or about 1992, in anticipation  
[23] of having to pay taxes assessed, and continuing through the  
[24] date of this indictment, Barry Trupin, the defendant,  
[25] executed a scheme designed to evade payment of more than \$6

Page 5701

[1] million in personal income taxes that he owed for the years  
[2] 1980 through 1986. As described below, Trupin used various  
[3] means to evade payment of those taxes, including, among  
[4] others: (a) concealing his assets — including real  
[5] property, collectibles, and cash — in corporate entities  
[6] and trusts that he controlled; (b) concealing assets in the  
[7] names of family members; (c) causing corporate entities that  
[8] he controlled to sell assets and to distribute the proceeds  
[9] to corporate bank accounts controlled by him and family  
[10] members; and (d) transferring assets outside of the United  
[11] States."

[12] Then there is another subheading: "A. Trupin's  
[13] use of his corporate entities to secretly pay his personal  
[14] expenses.

[15] "7. Moneyline, Inc.," there's an indication that  
[16] that would just be called Moneyline thereafter, "was  
[17] incorporated in the State of Delaware in June 1987. At that  
[18] time, Trupin was Moneyline's sole director. In that  
[19] capacity, Trupin sold the shares of Moneyline to a trust  
[20] purportedly for his daughter's benefit. In or about 1992,  
[21] after Delaware dissolved Moneyline due to nonpayment of  
[22] fees, two of Trupin's family members reactivated the  
[23] corporation. At various times thereafter, and continuing  
[24] through the date of this indictment, Trupin and/or his  
[25] family members and accountants were listed as directors and

Page 5702

[1] officers of Moneyline on various corporate documents. Since  
[2] at least 1993, Trupin, in some instances along with a family  
[3] member, controlled Moneyline's bank and brokerage accounts.

[4] "8. Beginning in or about at least 1992, Trupin  
[5] used various Moneyline bank and brokerage accounts to  
[6] receive the proceeds of the sales of assets that he  
[7] controlled, and thereby to conceal his receipt of those  
[8] proceeds. From in or about at least 1992 and continuing  
[9] through the date of this indictment, in order to further  
[10] conceal that he had substantial funds and cash available for  
[11] his personal use that he could have used to pay taxes that  
[12] he had due and owing, Trupin utilized funds in various  
[13] Moneyline accounts, rather than his own personal bank  
[14] account, to pay bills for personal expenses that he had  
[15] incurred and luxury items that he had bought for his  
[16] personal use. Among other items, Trupin used Moneyline  
[17] funds — in some instances funneled through other  
[18] corporations — to pay for a sailboat, a Range Rover  
[19] recreational vehicle, cable television bills, health  
[20] insurance, dental bills and legal bills."

[21] And there is a subheading "B. Trupin's personal  
[22] use of the proceeds of the sale of Dragon's Head and his  
[23] concealment of that personal use.

[24] "9. In or about 1979, RRI Realty," there's an  
[25] indication that thereafter that will be called simply RRI,

[1] "purchased certain real property, improved with a residence,  
 [2] located in Southampton, New York. RRI was a subsidiary of  
 [3] Rothschild Reserve International." There's an indication  
 [4] that thereafter that will be called Rothschild Reserve.

[5] "Rothschild Reserve was, in turn, held by a trust  
 [6] established in 1980 purportedly for the benefit of Trupin's  
 [7] daughter." It has an indication that that will thereafter  
 [8] be called the 1980 Trust. "At the time of the purchase of  
 [9] the property, Barry Trupin, the defendant, was the chairman  
 [10] of Rothschild Reserve. In or about October 1980, Trupin  
 [11] became the chairman of RRI.

[12] "10. At or about the time of the property  
 [13] purchase, Barry Trupin, the defendant, commenced renovating  
 [14] the residence for the personal use of himself and his  
 [15] family. These renovations, which were intended to transform  
 [16] the Southampton house from a Georgian colonial into a style  
 [17] approximating a Gothic castle, continued until approximately  
 [18] 1986, but were never completed. The property was commonly  
 [19] known by the name Dragon's Head.

[20] "11. In or about May 1992, RRI sold Dragon's  
 [21] Head for approximately \$3.3 million. At the time of the  
 [22] sale, the ownership of RRI had been transferred from  
 [23] Rothschild Reserve to other corporate entities, and  
 [24] ultimately was owned by a 1983 Trust created purportedly for  
 [25] the benefit of Trupin's daughter. At this time, Trupin's

[1] family members were officers of RRI. Trupin represented RRI  
 [2] at the closing.

[3] "12. Much of the purchase price of Dragon's Head  
 [4] was paid to individuals and entities who were creditors of  
 [5] Trupin or of entities controlled by Trupin. For example,  
 [6] the purchaser of Dragon's Head assumed a mortgage in the  
 [7] amount of \$1,322,000 that had been placed on Dragon's Head  
 [8] by a law firm that was owed money for legal fees that it had  
 [9] rendered to Trupin and to entities controlled by Trupin.  
 [10] The net proceeds of the sale of Dragon's Head, after these  
 [11] sums and other expenses were paid, were approximately  
 [12] \$962,090," and there's an indication that that will  
 [13] thereafter be referred to as the net proceeds.

[14] "13. On or about May 20, 1992, Barry Trupin, the  
 [15] defendant, directed the lawyer for the purchaser of Dragon's  
 [16] Head to wire the net proceeds of the sale to the escrow  
 [17] account of an attorney who had previously represented  
 [18] Trupin, his family, and various entities controlled by  
 [19] Trupin. Thereafter, Trupin directed that the net proceeds  
 [20] in escrow be distributed into three separate bank accounts  
 [21] in the names, respectively, of three corporate entities:  
 [22] Mill Creek Realty Corp.," there's an indication that that  
 [23] will thereafter be called Mill Creek, "Penn Realty Holdings  
 [24] Corp.," there's an indication that that will thereafter be  
 [25] called Penn Realty, "and Consolidated Holding Corp.," and

[1] there's an indication that that thereafter will be referred  
 [2] to as Consolidated. "These accounts were opened for the  
 [3] purpose of receiving and disbursing the proceeds of the sale  
 [4] of Dragon's Head.

[5] "14. According to corporate resolutions filed  
 [6] with the banks at which the accounts were opened, Barry  
 [7] Trupin, the defendant, was the chairman of Mill Creek and  
 [8] Penn Realty. According to a corporate resolution filed by  
 [9] Consolidated in May 1992, Trupin was the president of  
 [10] Consolidated; according to a subsequent resolution, Trupin's  
 [11] daughter replaced him as president. Moreover, both Trupin  
 [12] and his daughter wrote checks on the Penn Realty, Mill Creek  
 [13] and Consolidated accounts. Trupin received funds from these  
 [14] accounts in the form of checks to cash. Trupin also  
 [15] directed that a \$325,000 check be drawn on the Mill Creek  
 [16] account to Classic Books, a corporation that he controlled.  
 [17] Classic Books thereafter transferred \$300,000 to a Moneyline  
 [18] account at Marine Midland Bank. Of this sum, at Trupin's  
 [19] direction, \$200,000 was transferred to a Moneyline account  
 [20] at Merrill Lynch. Among other things, the money in the  
 [21] Merrill Lynch account was used to purchase a Range Rover  
 [22] recreational vehicle. Trupin also directed that  
 [23] approximately half of the net proceeds of the sale of  
 [24] Dragon's Head — \$480,000 — be wire transferred to his  
 [25] second wife in the British Virgin Islands, purportedly in

[1] repayment of a loan that she had made to him."

[2] There's another subheading, "C. Trupin's  
 [3] transfer of assets he controlled to locations outside of the  
 [4] United States." And then there's a subsubheading, "(i)  
 [5] Trupin's Sale of the 16th Century Henry II Armor.  
 [6] "15. In or about 1980, Rothschild Collection,  
 [7] Ltd.," and there's an indication that that thereafter will  
 [8] be called Rothschild Collection, "was incorporated. At that  
 [9] time, Rothschild Reserve, which was held by the 1983 Trust,  
 [10] was the sole shareholder of Rothschild Collection, and Barry  
 [11] Trupin, the defendant, was the sole shareholder, chairman,  
 [12] and director of Rothschild Collection. Between in or about  
 [13] 1981 and in or about 1987, the ownership of Rothschild  
 [14] Collection was transferred to other corporate entities  
 [15] controlled by Trupin, although, at times, Trupin's family  
 [16] members served as directors and officers.

[17] "16. In or about 1983, Rothschild Collection  
 [18] acquired six suits of armor, including one described as  
 [19] Milanese three-quarter armor made for Henry II," and there's  
 [20] an indication that that thereafter will be called the Henry  
 [21] II armor. The purchase price of the Henry II armor was  
 [22] approximately \$2.5 million. Although title to the Henry II  
 [23] armor was in Rothschild and its successor corporations, on  
 [24] or about September 14, 1998, Trupin, in his personal  
 [25] capacity, pledged the armor as collateral to secure a

Page 5707

[1] promissory note that he made to his second wife.  
 [2] "17. In or about January 1993, the Henry II  
 [3] armor was sold for approximately \$1,550,000 by Barry Trupin,  
 [4] the defendant, purportedly as agent for the Trupin Family  
 [5] Trust," which is in quotes. "The proceeds of the sale were  
 [6] wire transferred to a corporate account, in the name of  
 [7] Moneyline, at the Royal Bank of Canada in Vancouver, British  
 [8] Columbia," and there's an indication that thereafter it will  
 [9] be referred to as the Royal Bank account, "which had been  
 [10] opened in November 1993 with a deposit of \$500. Other than  
 [11] the initial \$500,000 deposit, all of the funds in the Royal  
 [12] Bank account were proceeds from the sale of the Henry II  
 [13] armor. According to a corporate resolution filed with the  
 [14] Royal Bank of Canada, Trupin and his daughter had signatory  
 [15] authority over the Royal Bank account.

[16] "18. Between in or about January and in or about  
 [17] May 1993, Barry Trupin, the defendant, caused over \$550,000  
 [18] to be transferred from the Royal Bank account to purchase  
 [19] two parcels of land, improved with a house, located in  
 [20] British Columbia, Canada." There is an indication that that  
 [21] will thereafter be referred to as the Canadian property.  
 [22] "In addition, Trupin retained an architect to renovate the  
 [23] Canadian property, and paid for the renovations with funds  
 [24] from the Royal Bank account. In order to conceal that the  
 [25] property was for his personal use, Trupin directed his

Page 5708

[1] daughter to purchase the property in her name, supplying her  
 [2] with the money through a purported loan to her from  
 [3] Moneyline of \$1 million. Trupin also directed that the  
 [4] architect bills be sent to his daughter.  
 [5] "19. In addition to using the proceeds of the  
 [6] sale of the Henry II armor to purchase and renovate the  
 [7] Canadian property, Barry Trupin, the defendant, also caused  
 [8] approximately \$195,368 of the proceeds from the sale to be  
 [9] wire transferred to his second wife in the British Virgin  
 [10] Islands, in purported repayment of a loan that she had made  
 [11] to Trupin."

[12] Now, this is subsubheading (ii) "Trupin's  
 [13] transfer of various collectibles to Canada," and there's a  
 [14] subheading to that "(a) the crated antiques.  
 [15] "20. In or about the spring of 1993 Barry  
 [16] Trupin, the defendant, caused certain crated property, not  
 [17] specifically described, but valued by him at \$600,000, to be  
 [18] transported to the Canadian property. The cost of the  
 [19] shipping was paid from the Royal Bank account. According to  
 [20] a subsequent damage claim filed by Trupin against the  
 [21] carrier of the property, among the contents in the crates  
 [22] was an antique fireplace mantel valued at \$150,000.

[23] Subsubheading "(b) the Alma-Tadema Piano.

[24] "21. In or about October 1986, Barry Trupin's  
 [25] second wife, on behalf of the Trupin Family Trust," and

Page 5709

[1] that's in quotes, lent to the Museum of Fine Arts in Boston  
 [2] a concert grand piano and two stools, dating from the period  
 [3] 1884-1887, designed by Alma Tadema. In or about March 1989,  
 [4] Trupin's second wife signed another agreement with the  
 [5] Museum extending the loan of the piano until at least 1993.  
 [6] According to each loan agreement, the value of the piano was  
 [7] \$1 million. In or about December 1990, Trupin, in his  
 [8] personal capacity, signed a promissory note with his second  
 [9] wife, whereby he pledged the piano as collateral for a loan  
 [10] from her. In a subsequent modified promissory note between  
 [11] Trupin and his second wife, dated June 5, 1992, Trupin again  
 [12] pledged the piano as collateral. In or about 1995, Trupin  
 [13] contacted the Museum of Fine Arts in Boston and requested  
 [14] that the museum ship the piano to the Canadian property.  
 [15] After receiving permission from Trupin's second wife, who  
 [16] was, on record, the lender of the piano, the museum shipped  
 [17] the piano to Seattle, Washington, where it was then  
 [18] transported to the Canadian property."  
 [19] There's another subsubheading "(c) Fleet of  
 [20] Rolls-Royces.  
 [21] "22. Through in or about the 1980s and early  
 [22] 1990s, Barry Trupin, the defendant, maintained a fleet of  
 [23] antique Rolls-Royces. These were held in the corporate name  
 [24] of Paragon Leasing. From at least 1986, Trupin was the  
 [25] chairman of Paragon Leasing. Although these Rolls-Royces

Page 5710

[1] were held in a corporate name, they were used for personal  
 [2] travel by Trupin, his family members, and chauffeurs who  
 [3] drove the Trupin family.  
 [4] "23. In or about May 1993, Barry Trupin, the  
 [5] defendant, caused three of these Rolls-Royces — a 1934  
 [6] Phantom II and two 1950s limousines — to be sent to him in  
 [7] British Columbia. Trupin registered the Phantom II to  
 [8] himself at the address of the Canadian property, and  
 [9] maintained it at that address. Thereafter, in or about  
 [10] April 1995, Trupin sold the Phantom II to a buyer in the  
 [11] United States for \$200,000. To conceal that he was, in  
 [12] fact, the owner of the car and the recipient of the proceeds  
 [13] of the sale, Trupin signed the contract of sale as vice  
 [14] president of Moneyline, and directed that the proceeds be  
 [15] wire transferred into a Moneyline account. Although the two  
 [16] 1950s Rolls-Royce limousines had been unregistered since the  
 [17] late 1980s, Trupin was listed as the importer of record when  
 [18] the limousines were shipped to Canada. In or about December  
 [19] 1994, Trupin sold these limousines for over \$52,000."  
 [20] There is a statutory allegation.  
 [21] "24. From at least in or about 1992, up through  
 [22] and including the date of filing of this indictment, in the  
 [23] Southern District of New York and elsewhere, Barry Trupin,  
 [24] the defendant, unlawfully, willfully, and knowingly did  
 [25] attempt to evade and defeat the payment of a large part of

[1] the income tax due and owing by him for the years 1980  
 [2] through 1986, to wit, approximately \$6,681,326, by various  
 [3] means, including, among others, concealing and attempting to  
 [4] conceal from the IRS the nature and extent of his assets,  
 [5] making false statements to the IRS, placing funds and  
 [6] properties in the names of individual and corporate  
 [7] nominees, and placing funds and property beyond the reach of  
 [8] service of process."

[9] And then there's a reference to the statute on  
 [10] which the government relies, "Title 26, United States Code,  
 [11] Section 7201."

[12] Next is the heading "Count 2," and there's a  
 [13] subheading for that that says "False statements to the IRS.  
 [14] "25. On or about October 26, 1993, in the  
 [15] Southern District of New York, Barry Trupin, the defendant,  
 [16] in a matter within the jurisdiction of a department and  
 [17] agency of the United States, to wit, the Internal Revenue  
 [18] Service, unlawfully, willfully, and knowingly did falsify,  
 [19] conceal and cover up by trick, scheme, or device a material  
 [20] fact, and did make and use a false writing and document  
 [21] knowing the same to contain false, fictitious and fraudulent  
 [22] statements and entries, to wit, Trupin caused to be  
 [23] submitted to the Internal Revenue Service a Collection  
 [24] Information Statement for Individuals in which he falsely  
 [25] stated, under penalties of perjury, that his only assets

[1] were \$500 in cash and a \$48,000 line of credit." And under  
 [2] that there's a reference to the statute the government  
 [3] relies on in respect to count 2, "Title 18, United States  
 [4] Code, Section 1001."

[5] That's the indictment, and I've read that to you  
 [6] so you know what the charges in the indictment are. Please  
 [7] remember that the indictment is not evidence.

[8] The indictment, by the way, uses the terms  
 [9] "nominee" and "alter ego." Those terms are frequently used  
 [10] technical terms and are not to be taken as pejorative. I  
 [11] will not use the terms themselves, but I will discuss the  
 [12] principles they represent insofar as they are relevant in  
 [13] this case.

[14] Count 1 of the indictment charges that Mr. Trupin  
 [15] violated Section 7201 of Title 26 of the United States Code.  
 [16] That section provides, in pertinent part, as follows: "Any  
 [17] person who willfully attempts in any manner to evade or  
 [18] defeat any tax imposed by this title or the payment  
 [19] thereof...shall...be guilty of a crime."

[20] In this case, the government contends that  
 [21] Mr. Trupin violated Section 7201 by attempting, beginning in  
 [22] 1992, to evade and defeat the payment of a large part of the  
 [23] income taxes due and owing by him for the years 1980 through  
 [24] 1986 by attempting to conceal from the IRS the nature and  
 [25] extent of his assets. For purposes of this case, it is

[1] immaterial that, in some of those years, joint returns had  
 [2] been filed. Mr. Trupin was responsible for payment of all  
 [3] income taxes due in the years in which joint returns were  
 [4] filed. That his first or second wife was also responsible  
 [5] for payment of income taxes due in certain of those years is  
 [6] not relevant.

[7] For the sake of clarity, let me point out that it  
 [8] is only his own personal income taxes for the years 1980  
 [9] through 1986 that Mr. Trupin is accused of attempting to  
 [10] evade and defeat, not any income taxes that may have been  
 [11] due and owing by any other persons or entities, including  
 [12] any of the trusts or corporations you have heard about with  
 [13] which Mr. Trupin has some connection.

[14] (Continued on next page)

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

**(CONTINUED)**

[1] [2] **THE COURT:** And it is only Mr. Trupin's assets  
 [3] which he is accused of concealing and attempting to conceal,  
 [4] not the assets of any other person or entity. I will  
 [5] explain to you the rules of law under which you must decide  
 [6] whether any asset is an asset of Mr. Trupin. Also for the  
 [7] sake of clarity, let me point out that Mr. Trupin is accused  
 [8] only of attempting to evade or defeat payment of his  
 [9] personal income taxes. There is no charge in this case that  
 [10] Mr. Trupin or any other person or entity failed to file a  
 [11] tax return as required or filed a false tax return.

[12] One further point of clarification. This case,  
 [13] including both counts of indictment, has nothing to do with  
 [14] the collection of any taxes that may be due to the IRS. It  
 [15] is a criminal case. There is a distinction between civil  
 [16] liability upon a defendant for the non-payment of taxes, and  
 [17] criminal responsibility for personal conduct. We are not  
 [18] concerned here with civil liability, that is, whether or not  
 [19] the taxes claimed to be due will be paid. Rather, the  
 [20] question here is only whether the government has proved  
 [21] beyond a reasonable doubt that the defendant, Mr. Trupin,  
 [22] committed the crimes charged in the indictment.

[23] Now, to establish the defendant's guilt of the  
 [24] offense charged in Count One of the indictment, the attempt  
 [25] to evade or defeat the payment of taxes, the government is

[1] required to prove, beyond a reasonable doubt, all of the  
 [2] following three elements:

[3] First: The existence of a substantial tax  
 [4] deficiency in Mr. Trupin's tax returns for the years 1980  
 [5] through 1986;  
 [6] Second: An affirmative act by Mr. Trupin  
 [7] constituting an attempt to evade or defeat the payment of  
 [8] that deficiency; and  
 [9] Third: That Mr. Trupin acted knowingly and  
 [10] willfully.

[11] The first element of the offense charged in Count  
 [12] One which the government must prove beyond a reasonable  
 [13] doubt is a substantial tax deficiency or, in other words,  
 [14] that Mr. Trupin owed substantially more federal income taxes  
 [15] for the years 1980 through 1986 than was declared on his  
 [16] income tax returns for those years, and that at least a  
 [17] substantial part of the federal income taxes owed by him for  
 [18] those years was not paid.

[19] The government contends that the IRS, having  
 [20] found deficiencies in Mr. Trupin's tax returns for the years  
 [21] 1980 through 1986, assessed, in January of 1992, the sum of  
 [22] \$787,417 against Mr. Trupin for the year 1981, and that, in  
 [23] December of 1993, the IRS obtained Tax Court default  
 [24] judgments in the sum of \$5,894,209 against Mr. Trupin for  
 [25] the years 1980 and 1982 through 1986.

[1] If you find that those default judgments were  
 [2] entered, you must consider those judgments to be final on  
 [3] the question whether Mr. Trupin owed the additional taxes  
 [4] that the Tax Court found that he owed for the years 1980 and  
 [5] 1982 through 1986.

[6] The government does not have to prove the exact  
 [7] amount of the taxes Mr. Trupin owes, only that that amount  
 [8] is substantial, and it does not have to prove that he  
 [9] attempted to evade or defeat payment of all of the taxes  
 [10] alleged in the indictment, only a substantial amount  
 [11] thereof.

[12] The second element of the offense charged in  
 [13] Count One of the indictment which the government must prove  
 [14] beyond a reasonable doubt is that Mr. Trupin attempted, by  
 [15] an affirmative act, to evade or defeat payment of income  
 [16] taxes that he owed.

[17] The law prohibits a person who owes income taxes  
 [18] from engaging in affirmative action for the purpose of  
 [19] concealing from the IRS the nature and the extent of his  
 [20] assets that he could use to pay those income taxes. That is  
 [21] what the government contends, in the indictment, that  
 [22] Mr. Trupin did.

[23] Note at the outset two things about the  
 [24] prohibition I have just described. In the first place, to  
 [25] find Mr. Trupin guilty of the offense charged in Count One

[1] of the indictment, you must find that he engaged in the  
 [2] affirmative action to conceal his assets from the IRS.  
 [3] Inaction is insufficient. Thus, for example, the failure to  
 [4] pay taxes owed to the IRS standing alone, no matter what  
 [5] assets a person has, does not constitute a violation of the  
 [6] law that Mr. Trupin was accused of violating.

[7] In the second place, in order to find Mr. Trupin  
 [8] guilty of the offense charged in Count One of the indictment  
 [9] you must find that he engaged in affirmative action to  
 [10] conceal his own assets from the IRS.

[11] The indictment charges that Mr. Trupin committed  
 [12] affirmative acts of concealment of several kinds: By  
 [13] concealing assets which were his in corporations and trusts  
 [14] that he controlled; by concealing his assets in the names of  
 [15] family members; by causing corporations that he controlled  
 [16] to sell assets which were his and to distribute the proceeds  
 [17] of those sales to corporate bank accounts that he, or family  
 [18] members, controlled; and by transferring his assets outside  
 [19] the United States.

[20] Mr. Trupin disputes the government's allegations.

[21] He contends that the government has not shown that the  
 [22] assets in question were his assets. It is his position, for  
 [23] instance, that the house called Dragon's Head, the Tiffany  
 [24] clock, the Alma-Tadema piano, the Henry II armor, the  
 [25] fireplace and the three Rolls Royce automobiles, and the

[1] proceeds of the sale of those assets, were, at all times,  
 [2] owned by corporations which were in turn owned by trusts for  
 [3] the benefit of his daughter, Tara Michaels.

[4] The respective contentions of the government and  
 [5] Mr. Trupin require that I first explain, briefly, the nature  
 [6] of trusts and corporations.

[7] A trust is an arrangement recognized by the law  
 [8] pursuant to which a person, called the grantor or settlor,  
 [9] conveys property to a person, called the trustee, to hold  
 [10] that property for the benefit of another person, called the  
 [11] beneficiary. Trusts are commonly and properly used for  
 [12] estate planning, that is, the arrangement of the disposition  
 [13] of one's property after death. The trustee has legal title  
 [14] to the property conveyed to him, but he holds that property  
 [15] in trust for the beneficiary, who is what is called the  
 [16] beneficial owner of the property conveyed to the trustee,  
 [17] even though the trustee holds legal title to that property.  
 [18] The property conveyed to the trustee may be of any sort:  
 [19] Money, shares of stock of corporations, personal property or  
 [20] real estate. In cases in which a trust holds shares of  
 [21] stock of a corporation, even if the trust holds all of the  
 [22] stock of a corporation, the trust and the corporation are  
 [23] distinct entities.

[24] The trustee owes a duty of complete loyalty to  
 [25] the interests of the beneficiary, and must, in dealing with

[1] the property convey to him as trustee, exclude all selfish  
 [2] interests and all consideration of the interests of third  
 [3] persons. However, the written trust instrument may permit  
 [4] the trustee to engage in self-interested transactions. The  
 [5] law provides remedies to the beneficiary in cases in which  
 [6] the trustee breaches that duty of loyalty to the beneficiary  
 [7] by using the property held in trust for the benefit of  
 [8] anyone other than the beneficiary, whether for the best  
 [9] benefit of the trustee himself or of a third-party. Various  
 [10] details of a trust are normally governed by the written  
 [11] trust instrument by which it is established, for example,  
 [12] how long the trust is to last, when a beneficiary is to  
 [13] receive some or all of the property held in trust, and who  
 [14] is to succeed as trustee if the original trustee or  
 [15] successor trustee for any reason does not continue to act as  
 [16] trustee. There is nothing inappropriate or illegal in a  
 [17] member of the same family as the settlor or the beneficiary  
 [18] or both serving as a trustee.

[19] As I have said, the trustee holds legal title to  
 [20] the property held by him in trust. As trustee, holding  
 [21] legal title, he has control over the use of disposition of  
 [22] that property. The general rule is that the property held  
 [23] by the trustee in trust is not considered to be his own  
 [24] property for tax purposes, notwithstanding his control of  
 [25] the property. There can, however, be circumstances in which

[1] this general rule does not apply, which I will explain.  
 [2] Turning now to corporations: A corporation is a  
 [3] legal entity provided for by the law. In the case of a  
 [4] corporation, one or more persons, called shareholders or  
 [5] stockholders, own the shares of stock of the corporation.  
 [6] The corporation is an entity distinct from the shareholders.  
 [7] That is so even if the corporation has only one shareholder.  
 [8] One characteristic, and benefit, of a corporation is what  
 [9] the law calls limited liability. That means that the  
 [10] shareholders are not personally responsible for the  
 [11] liabilities of the corporation. Nor is the corporation  
 [12] responsible for the personal liabilities of its  
 [13] shareholders, although a creditor of a shareholder may  
 [14] obtain the shareholder's shares of stock in the corporation  
 [15] in satisfaction of a personal debt of the shareholder  
 [16] because, those shares are the shareholder's property.  
 [17] Another characteristic, and benefit, of a corporation, is  
 [18] that partial or complete ownership of a corporation,  
 [19] represented by its issued shares, can be readily transferred  
 [20] by transfer of shares. A corporation may properly hold the  
 [21] shares of another corporation. There is nothing  
 [22] inappropriate or illegal in members of the same family as  
 [23] the shareholder of a corporation serving as directors or  
 [24] officers of the corporations.  
 [25] As a general rule, a corporation and its

[1] shareholders, even a sole shareholder who holds all of the  
 [2] shares in the corporation, are distinct for tax purposes.  
 [3] If a corporation has income, the corporation, not the  
 [4] shareholders, is responsible for paying tax on that income.  
 [5] If the shareholder has income, the shareholder, not the  
 [6] corporation, is responsible for paying tax on that income,  
 [7] even if the income consists of a distribution in the form of  
 [8] a dividend by the corporation to the shareholder. There  
 [9] can, however, be circumstances in which this general rule  
 [10] does not apply, which I will explain.

[11] With that background in mind, let me now turn to  
 [12] the government's contentions.

[13] The government contends, in substance, that the  
 [14] assets of the trusts for the benefit of Mr. Trupin's  
 [15] daughter and the assets of Mill Creek Realty Corp., Penn  
 [16] Realty Holding Corp., Consolidated Holding Corp., Moneyline,  
 [17] Inc., Fanderton Trading, Ltd., RRI Realty Corp. and  
 [18] Rothschild Reserve International and its subsidiaries,  
 [19] including Rothschild Collections, Inc., were, or became,  
 [20] those of Mr. Trupin. I told you a few minutes ago that the  
 [21] assets of a trust are generally not those of the trustee for  
 [22] tax purposes, and that the assets of the corporation, even  
 [23] if it has only one shareholder, are generally not those of  
 [24] the shareholder for tax purposes, but that there could be  
 [25] circumstances in which these rules will not apply. What are

[1] those circumstances?  
 [2] In brief summary, and subject affirm the rules I  
 [3] will explain, the circumstances may be stated as follows:  
 [4] When the trustee or the shareholder, as the case may be,  
 [5] himself uses the assets of the trust or the corporation as  
 [6] if they were merely his own personal property, for his own  
 [7] personal, not trust or corporate, purposes, then, to that  
 [8] extent, the assets will be considered to be his for tax  
 [9] purposes. Keep in mind, however, that a trustee, as a  
 [10] matter of law, is responsible for control of the assets of  
 [11] the trust, and that a sole shareholder, as a matter of law,  
 [12] is given complete control over the corporation of which he  
 [13] is a sole shareholder. The trustee or sole shareholder thus  
 [14] properly has command over the assets of the trust or  
 [15] corporation. The exercise by a trustee or a shareholder of  
 [16] the control given him by law over the assets of a trust or a  
 [17] corporation is not, standing alone, a proper reason to treat  
 [18] the assets of the trust or the corporation as those of the  
 [19] trustee or shareholder. In order for you to find that the  
 [20] assets of any trust or corporation became the assets of  
 [21] Mr. Trupin, you must find that, as trustee or shareholder,  
 [22] he exercised his control over the trust or the corporation,  
 [23] exercised his command over the property of the trust or  
 [24] corporation, and used the trust or corporate assets, for his  
 [25] own personal purposes, not for trust or corporate purposes.

[1] Keep in mind that there are what might be called  
 [2] personal purposes that coincide with trust or corporate  
 [3] purposes. Thus, if you find that, as trustee, Mr. Trupin  
 [4] acted with the purpose of increasing or preserving the  
 [5] assets of the trusts, or the assets of corporations owned by  
 [6] one of the trusts, for the ultimate benefit of his daughter  
 [7] as beneficiary, such action or that reason would not be a  
 [8] personal use of trust or corporate assets that would justify  
 [9] treating the trust assets as personal assets of Mr. Trupin.

[10] There are several other factors which you may  
 [11] consider in connection with the question of whether  
 [12] Mr. Trupin so used the assets of a corporation that they are  
 [13] to be regarded by you as his own assets tax purposes. One  
 [14] is whether the corporation was formed for or conducted in  
 [15] some sort of business activity. As to this factor you must  
 [16] bear in mind that to hold property as an investment is a  
 [17] legitimate business activity. Nor is there anything  
 [18] improper in one corporation merely holding the shares of one  
 [19] or more other corporations, in other words, being a holding  
 [20] company. That is a proper business activity as well, unless  
 [21] you find that it was arranged by Mr. Trupin for the purpose  
 [22] of concealment of his own assets from the IRS. Another fact  
 [23] you may consider is whether the corporation observed in  
 [24] substance normal corporate formalities, such as the election  
 [25] or appointment of directors and officers and the keeping of

[1] records of its activities. You may consider any family  
 [2] relationship between a shareholder and the directors or  
 [3] officers of the corporation, but, in this connection, you  
 [4] must keep in mind that in the case of a corporation all of  
 [5] the shares of which are owned by a single shareholder, the  
 [6] corporation may be governed by consent of the sole  
 [7] shareholder. And, if that sole shareholder is a trust, then  
 [8] the corporation may be governed by consent of the trust  
 [9] exercised by the trustee. Another factor you may consider  
 [10] is whether the corporation filed income tax returns. In  
 [11] considering these factors, you may consider, among other  
 [12] things, the charter and bylaws of any corporation.

[13] I have said that you may consider these factors.  
 [14] They are not, however, dispositive by themselves. The facts  
 [15] that a corporation was not formed for a business purpose or  
 [16] did not conduct any business or did not observe normal  
 [17] corporate formalities or did not file tax returns, if you  
 [18] find that those are the facts, do not mean, standing alone,  
 [19] that Mr. Trupin did use the corporation's assets as his own.  
 [20] Such facts may support an inference that Mr. Trupin had the  
 [21] opportunity to use the corporation's assets as his own, but  
 [22] the government must still prove that Mr. Trupin did use the  
 [23] corporation's assets as his own, for his own personal, as  
 [24] opposed to any corporate, purposes.

[25] In the case of a trust, there are also factors

[1] you may consider in connection with question whether  
 [2] Mr. Trupin so used the assets of a trust that they are to be  
 [3] regarded by you as his assets for tax purposes. One is  
 [4] whether the trust was created and administered for a family  
 [5] or estate planning purpose. A trust the purpose of which is  
 [6] so convey wealth to a child after one's death is such a  
 [7] purpose. Another factor you may consider is whether  
 [8] Mr. Trupin acted in accordance with the provisions of the  
 [9] written instruments by which the trusts were created. In  
 [10] connection with these factors, you should consider, among  
 [11] other things, the terms of those instruments.

[12] Again, however, these factors are not  
 [13] dispositive. Even if you find that the trust was not  
 [14] created or administered for a family or estate planning  
 [15] purpose or that Mr. Trupin disregarded the terms of the  
 [16] trust instrument, the government must still prove that  
 [17] Mr. Trupin did use the trust's assets for his own personal,  
 [18] as opposed to any trust, purpose.

[19] If you do find that the assets of any trust or  
 [20] corporation were, or became, the personal assets of  
 [21] Mr. Trupin, that again is not, by itself, sufficient for you  
 [22] to find Mr. Trupin guilty of the charge contained in Count  
 [23] One of the indictment. You must also find that his use of  
 [24] those assets for personal purposes was an attempt on his  
 [25] part, by an affirmative act, to conceal those assets from

[1] the IRS.  
 [2] Putting aside the question I have been talking  
 [3] about — under what circumstances the assets of a trust or a  
 [4] corporation are being considered to be Mr. Trupin's own  
 [5] assets for tax purposes — the government contends that  
 [6] Mr. Trupin placed assets which were his own in the names of  
 [7] others, specifically including the property on Vancouver  
 [8] Island in Canada, sailboat named the Isis and the Land Rover  
 [9] Defender automobile in the name of his daughter Tara  
 [10] Michaels, Dragon's Head in the name of RRI Realty Corp., and  
 [11] money in bank accounts of Mill Creek Realty Corp., Penn  
 [12] Realty Holding Corp., Consolidated Holding Corp., Moneyline,  
 [13] Inc., and Fanderton Trading Ltd.  
 [14] If a person places his property in the name of  
 [15] another person or entity for that other person or entity to  
 [16] hold for him in that other's name, without transferring  
 [17] ownership to that other, then the property remains the  
 [18] property of the person who, for the purpose of holding it in  
 [19] another name, placed it in the name of the other.  
 [20] If you find that Mr. Trupin did place an asset of  
 [21] his own in the name of another person or entity to hold for  
 [22] him, however, that is not sufficient by itself for you to  
 [23] find Mr. Trupin guilty of Count One of the indictment. The  
 [24] government must also prove that his doing so was an attempt,  
 [25] by an affirmative act, to conceal his assets from the IRS.

[1] The government also contends that Mr. Trupin  
 [2] moved assets which were his out of the United States, to  
 [3] Canada. If you find that Mr. Trupin did so, that is not  
 [4] sufficient, by itself, to find Mr. Trupin guilty of Count  
 [5] One of the indictment. The government must also prove that  
 [6] his doing so was an attempt, by an affirmative act, to  
 [7] conceal his assets from the IRS.

[8] I have said, in connection with all of the  
 [9] government's contentions, that you must find that Mr. Trupin  
 [10] attempted, by an affirmative act, to conceal his assets from  
 [11] the IRS. You must also find that any such attempt occurred  
 [12] in 1992 or later. Mr. Trupin cannot be found guilty on the  
 [13] basis of an attempt to conceal his assets from the IRS on  
 [14] the basis of an act that occurred prior to 1992.

[15] One further point: Although the government must  
 [16] prove beyond a reasonable doubt that Mr. Trupin attempted,  
 [17] by an affirmative act, to conceal his assets from the IRS,  
 [18] it need not prove each allegation; the proof of one such act  
 [19] is sufficient, provided, however, that all jurors  
 [20] unanimously agree as to which affirmative act has been  
 [21] proved beyond a reasonable doubt. It is not sufficient if  
 [22] some jurors find that one such affirmative act was proved  
 [23] beyond a reasonable doubt, and others a different act.

[24] The third element that the government must prove  
 [25] beyond a reasonable doubt is that Mr. Trupin, if you find

[1] that he was not obliged to, or could not, pay his taxes with  
 [2] the assets the government contends were his, even if that  
 [3] belief was unreasonable or irrational, then you should find  
 [4] him not guilty. However, you may consider whether that  
 [5] belief was actually reasonable as a factor in deciding  
 [6] whether he held that belief in good faith. In this  
 [7] connection, I instruct you that no one is presumed to know  
 [8] the law relating to criminal violations of the tax laws. It  
 [9] should also be pointed out that neither a defendant's  
 [10] disagreement with the law nor a belief that the law is  
 [11] unconstitutional constitutes a defense of good faith.

[12] A defendant is under no burden to prove his good  
 [13] faith. The burden of establishing lack of good faith and  
 [14] the existence of criminal intent rests upon the government.

[15] In determining whether a defendant acted in good  
 [16] faith or whether he willfully attempted to evade or defeat  
 [17] the payment of taxes, you may consider all of the evidence  
 [18] in this case which bears on the defendant's state of mind.  
 [19] How did you determine whether a person is acting  
 [20] "knowingly" or "willfully," or what particular intent he has  
 [21] doing a particular act? One does not put up a sign saying I  
 [22] am acting "knowingly" or "willfully," or I am acting this or  
 [23] that specific intent, and it is impossible to read a  
 [24] person's mind.

[25] You determine whether a person is acting

[1] "knowingly" or "willfully" in a given situation, or what his  
 [2] particular intent may be in that situation, just as you  
 [3] would determine any other fact in this case — that is, by  
 [4] considering every bit of evidence in the case about that  
 [5] person and that situation, concluding from all of such  
 [6] evidence whether or not the particular act you are  
 [7] considering was "knowingly" and "willfully" performed, or  
 [8] whether or not it was performed with any particular intent.  
 [9] It is up to you to decide what evidence is relevant to that  
 [10] particular question. Any evidence in the case at all that  
 [11] you think is relevant to the question can be used by you in  
 [12] determining that question.

[13] I will now turn to Count Two of the indictment.  
 [14] Since we have spent some time in Count One, I will read  
 [15] Count Two again. That is only a single paragraph.

[16] Again, keep in mind this is the indictment and  
 [17] the indictment is not evidence. I am reading Count Two  
 [18] again so you will know what the charge is. Count Two reads,  
 [19] and this is paragraph 25 of the indictment: On or about  
 [20] October 26, 1993, in the Southern District of New York,  
 [21] Barry Trupin, the defendant, in a matter within the  
 [22] jurisdiction of a department and agency of the United  
 [23] States, to wit, the Internal Revenue Service, unlawfully,  
 [24] willfully and knowingly did falsify, conceal, cover up by  
 [25] trick, scheme and device a material fact, and did make and

[1] that he attempted, by an affirmative act, to conceal assets  
 [2] from the IRS, did so knowingly and willfully.  
 [3] An act that is done knowingly only if it is done  
 [4] purposely and deliberately and not because of mistake,  
 [5] accident, negligence or other innocent reason. An act is  
 [6] done willfully if it is done voluntarily and intentionally  
 [7] with intent to do something the law forbids, that is to say,  
 [8] with purpose either to disobey or disregard the law. An act  
 [9] is not done knowingly and willfully if it is done as a  
 [10] result of some innocent or legitimate reason, or for some  
 [11] other purpose than to evade and defeat the payment of taxes.  
 [12] Thus, if you find that Mr. Trupin concealed assets which  
 [13] were his only to conceal them from creditors other than the  
 [14] IRS, such as the National Union insurance company, you could  
 [15] not find that the willfulness required for finding him  
 [16] guilty of Count One had been proved. However, if you find  
 [17] that Mr. Trupin had more than one purpose, of which one was  
 [18] to conceal his assets from the IRS, then you could find that  
 [19] that requirement had been proved.

[20] A defendant does not act willfully if he believes  
 [21] in good faith that his actions comply with the law.  
 [22] Therefore, if Mr. Trupin believed that what he was doing was  
 [23] in accord with the law, he cannot be said to have had the  
 [24] criminal intent to willfully evade and defeat the payment of  
 [25] taxes. Thus, if you find that Mr. Trupin honestly believed

Page 5731

[1] use a false writing and document knowing the same to contain  
 [2] false, fictitious and fraudulent statements, to wit, Trupin  
 [3] caused to be submitted to the Internal Revenue Service a  
 [4] Collection Information Statement for Individuals in which he  
 [5] falsely stated, under penalties of perjury, that his only  
 [6] assets were \$500 in cash and a \$48,000 line of credit.

[7] Title 18, United States Code, Section 1001,

[8] provides in relevant part that:

[9] Whoever, in any matter within the jurisdiction of  
 [10] any department or agency of the United States knowingly and  
 [11] willfully falsifies, conceals, or covers up by any trick,  
 [12] scheme, or device a material fact; or . makes or uses  
 [13] any false writing or document knowing the same to contain  
 [14] any materially false, fictitious or fraudulent statement or  
 [15] entry, shall be [guilty of a crime].

[16] In order to meet its burden of proof on Count  
 [17] Two, the government must prove beyond a reasonable doubt all  
 [18] of the following four elements:

[19] First, that on or about the date specified in the  
 [20] indictment, Mr. Trupin used a writing or document;  
 [21] Second, the writing or document contained a  
 [22] material false, fictitious or fraudulent statement or entry;  
 [23] Third, Mr. Trupin knew the writing contained a  
 [24] false, fictitious or fraudulent statement or entry, and  
 [25] willfully used said writing or document; and

Page 5732

[1] Fourth, the document or writing was used, in a  
 [2] matter within the jurisdiction of the government of the  
 [3] United States.

[4] The first element that the government must prove  
 [5] beyond a reasonable doubt is that Mr. Trupin used a writing  
 [6] or document. In this regard, the government need not prove  
 [7] that he physically made or otherwise personally prepared the  
 [8] writing or document. It is sufficient to satisfy this  
 [9] element if you find that he caused the writing or document  
 [10] charged in the indictment to have been made or used.

[11] The second element that the government must prove  
 [12] beyond a reasonable doubt is that the writing or document  
 [13] was false, fictitious or fraudulent. A statement or  
 [14] representation is "false" or "fictitious" if it was untrue  
 [15] when made, and known at the time to be untrue by the person  
 [16] making it or causing it to be made. A writing or document  
 [17] is "fraudulent" if it was untrue when made and was made or  
 [18] caused to be made with the intent to deceive the government  
 [19] agency to which it was submitted.

[20] The indictment alleges that Mr. Trupin, in the  
 [21] Collection Information Statement dated October 26, 1993,  
 [22] submitted to the IRS, falsely stated that his only assets  
 [23] were \$500 in cash and a \$48,000 line of credit. The  
 [24] government contends that Mr. Trupin's assets at that time  
 [25] included, among other things, property at 3700 Trans Canada

Page 5733

[1] Highway on Vancouver Island in British Columbia, Canada;  
 [2] three Rolls Royce automobiles; the piano designed by Alma  
 [3] Tedema; a sailboat called the Isis; antiques valued by Barry  
 [4] Trupin at approximately \$600,000, including chimneypieces,  
 [5] an antique Tiffany grandfather clock and 17 lots of arms and  
 [6] armor; a white Rover Defender vehicle; and approximately  
 [7] \$700,000 in funds in bank and brokerage accounts in the name  
 [8] of Moneyline, Inc. As it does with respect to Count One,  
 [9] the government contends that Mr. Trupin himself was the true  
 [10] owner of those assets, even if they were held in the name of  
 [11] his daughter, corporations and/or trusts.

[12] I will not repeat here my earlier instructions as  
 [13] to when an asset held in the name of Mr. Trupin's daughter  
 [14] or a trust or corporation is Mr. Trupin's own asset, but you  
 [15] should bear those instructions in mind when considering this  
 [16] element of Count Two.

[17] You should also bear in mind that the government  
 [18] is not obliged to prove that Mr. Trupin was the true owner  
 [19] of all of the assets that I have just listed. The  
 [20] government satisfies its burden of proving that Mr. Trupin's  
 [21] statement about the extent of his assets was false if it  
 [22] proves beyond a reasonable doubt that he was the true owner  
 [23] of any material assets beyond those listed on the Collection  
 [24] Information Statement. You must, however, unanimously agree  
 [25] on more than one or more assets that were omitted. It is

Page 5734

[1] not sufficient if some jurors find one asset was omitted and  
 [2] other jurors find a different asset was omitted.

[3] The government must also prove beyond a  
 [4] reasonable doubt that the false statement or representation  
 [5] was material. A statement is material if it could have  
 [6] influenced the government agency's decision or activities.  
 [7] However, proof of actual reliance on the statement by the  
 [8] government is not required.

[9] The third element that the government must prove  
 [10] beyond a reasonable doubt is that the defendant acted  
 [11] knowingly and willfully. I have already instructed you, in  
 [12] connection with Count One, what knowingly and willfully  
 [13] mean. And that applies to Count Two as well. The fourth  
 [14] and final element that the government must prove beyond a  
 [15] reasonable doubt is that the writing or document was used  
 [16] with regard to a matter within the jurisdiction of the  
 [17] United States Government. I charge you that the IRS is a  
 [18] department of the United States Government. To be within  
 [19] the jurisdiction of a department or agency of the United  
 [20] States Government means that the statement must concern an  
 [21] authorized function of that department or agency.

[22] You will note that the indictment alleges that  
 [23] certain acts occurred on or about specific dates. It does  
 [24] not matter if the evidence you heard at trial indicates that  
 [25] a particular act occurred on a different date. The law

[1] requires only a substantial similarity between the dates  
 [2] alleged in the indictment and the dates established by the  
 [3] evidence.

[4] I remind you, however, that in connection with  
 [5] Count One, Mr. Trupin is accused of attempting, by  
 [6] affirmative act, to conceal his assets from the IRS only  
 [7] beginning in 1992, not at any earlier time, and that in  
 [8] connection with Count Two. The Collection Information  
 [9] Statement submitted to the IRS speaks of Mr. Trupin's assets  
 [10] as of its date, and must, for you to find him guilty of  
 [11] Count Two, be found to have been false on that date.

[12] Also, the indictment alleges certain dollar  
 [13] amounts. Again, the law only requires a substantially  
 [14] similarity between the indictment and the proof. Thus, if  
 [15] you find that the evidence indicates that, in fact, a  
 [16] different amount was involved, it is for you to determine  
 [17] whether the difference was material.

[18] In addition to all of the elements of the two  
 [19] counts of the indictment which I have just described to you,  
 [20] you must also decide with respect to each count of the  
 [21] indictment whether any act in furtherance of the crime  
 [22] charged in that count occurred within the Southern District  
 [23] of New York. I instruct you that the Southern District of  
 [24] New York includes Manhattan and Westchester County,  
 [25] including the City of White Plains.

[1] The government need not prove that all of the  
 [2] conduct charged in the indictment occurred in the Southern  
 [3] District. Venue turns on whether any act in furtherance of  
 [4] the crime was committed within the district.

[5] Moreover, the government need only prove venue by  
 [6] a preponderance of the evidence. Preponderance of the  
 [7] evidence simply means to prove that something is more likely  
 [8] so than not so. You may rely upon direct or circumstantial  
 [9] evidence in making this final. Please remember that the  
 [10] preponderance of the evidence standard applies only to the  
 [11] element of venue and that the government must prove all of  
 [12] the other elements of the counts of the indictment which I  
 [13] previously described to you beyond a reasonable doubt.

[14] You heard testimony that documents were obtained,  
 [15] and witnesses interviewed, in Canada. You have also seen  
 [16] videotaped depositions taken in Canada. I instruct you that  
 [17] various treaties permit United States law enforcement  
 [18] official to interview Canadian citizens and obtain documents  
 [19] from them, as well as to require them to provide deposition  
 [20] testimony such as the testimony you saw, consistent with  
 [21] both United States and Canadian law. There is nothing  
 [22] improper or illegal with the government using these  
 [23] techniques to obtain evidence.

[24] A couple of miscellaneous things.  
 [25] A person may, legally, authorize another to sign

[1] his or her name to a legal instrument. That authorization  
 [2] may lapse on the death of the person giving the  
 [3] authorization.

[4] The IRS has available to it a civil procedure by  
 [5] which it may summon a person to appear for questioning about  
 [6] his or her tax affairs, if the IRS has not been able  
 [7] otherwise to obtain relevant information, or summon for  
 [8] questioning other persons with knowledge. Persons summoned  
 [9] would have a right to decline to answer the IRS' questions.  
 [10] If a taxpayer is represented by a lawyer or accountant in  
 [11] his dealings with the IRS, the IRS may deal directly with  
 [12] the representative. The IRS also has available to it civil  
 [13] procedures by which it can assert liens against the assets  
 [14] of a person who owes taxes or obtain a legal determination  
 [15] as to whether certain assets are those of the person who  
 [16] owes taxes.

[17] Under Delaware law, if a corporation fails to pay  
 [18] the franchise taxes it is required to pay, the corporation  
 [19] is dissolved, that is, its corporate charter granted by  
 [20] Delaware is inoperative. If the corporation subsequently  
 [21] pays all unpaid franchise taxes, the corporation's charter  
 [22] becomes operative, retroactively to the date of dissolution,  
 [23] and corporate action taken during the intervening period is  
 [24] retroactively validated. Delaware law makes it a  
 [25] misdemeanor to exercise corporate powers while a corporate

[1] charter is inactive, but only the State of Delaware can  
 [2] bring criminal proceeding for that reason. In the absence  
 [3] of fraud or bad faith, the corporate officer may enter into  
 [4] transactions binding the corporation to corporate creditors  
 [5] remedies against the corporation, even when the corporate  
 [6] charter is inoperative. There is no evidence that the State  
 [7] of Delaware ever charged any corporation with which  
 [8] Mr. Trupin had a connection, or any shareholder, director or  
 [9] officer thereof, with criminal conduct for exercising  
 [10] corporate powers while the corporation's charter was  
 [11] inoperative.

[12] Some of the exhibits you saw were charts. These  
 [13] charts were introduced basically as summaries. At this  
 [14] point I'm talking. You will recall sort of charts that are  
 [15] up against the wall, they had Mr. Feinerman testify about.  
 [16] They are not direct evidence really. They are summaries of  
 [17] evidence. They are resumes or visual representations of  
 [18] information or data as set forth either in testimony or in  
 [19] documents. They are admitted as aids to you. They are not  
 [20] in and of themselves evidence. They are intended to be of  
 [21] assistance to you in your deliberations.

[22] In understanding the evidence which you have  
 [23] heard, it is clearly easier and convenient to utilize  
 [24] summary charts than to place all of the relevant documents  
 [25] in front of you. It is up to you to decide whether those

[1] charts fairly and correctly present the information in the  
 [2] testimony and the documents. The charts are not to be  
 [3] considered by you as direct proof of anything. They are  
 [4] merely graphic demonstrations of what the underlying  
 [5] testimony and documents are.

[6] So, it is up to you to determine whether these  
 [7] charts should be accepted or rejected on the basis of the  
 [8] underlying evidence and whether they have any value or  
 [9] significance whatsoever.

[10] To the extent that the charts conform with what  
 [11] you determine the underlying evidence to be, you may accept  
 [12] them. But one way or the other, you should realize that  
 [13] charts are not in and of themselves direct evidence. They  
 [14] are merely visual aids.

[15] Some charts, not admitted into evidence — I am  
 [16] talking now about charts that Ms. Neils used in her closing  
 [17] argument — although they may have referred to, or included  
 [18] all or portions of, documents admitted into evidence, were  
 [19] used during closing argument. Such a chart is not evidence  
 [20] but was used to illustrate or clarify the argument of  
 [21] counsel, and such charts may be considered by you, not as  
 [22] evidence, but for that purpose.

[23] Now, one other thing. One or more of you may  
 [24] have made notes for your personal use during the course of  
 [25] this trial. If any person has made notes, that person may

[1] use those notes to refresh his or her recollection of the  
 [2] evidence. Other jurors should not rely on a person who made  
 [3] notes; that is, it is up to each juror to recall the  
 [4] evidence for herself or his self. But the person who made  
 [5] the notes may use them for his own personal purposes, but  
 [6] ultimately all of you have to rely on your own recollection  
 [7] and not just defer to somebody who happened to make notes.

[8] Now, in a couple of minutes you are going to go  
 [9] into the jury room and start deliberating on this case.  
 [10] Under your oath as jurors, you are not to be swayed by  
 [11] sympathy. You are to be guided solely by the evidence in  
 [12] this case and under the crucial hardcore question that you  
 [13] must ask yourselves as you sift through the evidence is, has  
 [14] the government proven the guilt of Mr. Trupin beyond a  
 [15] reasonable doubt?

[16] It is for you alone to decide whether the  
 [17] government has proven that Mr. Trupin is guilty of the  
 [18] crimes charged, solely on the basis of the evidence, and  
 [19] subject to the law as I have explained it. It must be clear  
 [20] to you that once you let prejudice or bias or sympathy  
 [21] interfere with your thinking, there is a risk that you will  
 [22] not arrive at a truly just verdict. You must also put  
 [23] anything out of your mind you may have heard about  
 [24] Mr. Trupin outside of this courtroom.

[25] If you have a reasonable doubt as to the guilt of

[1] Mr. Trupin, you must not hesitate for any reason to find the  
 [2] verdict of not guilty.

[3] But on the other hand, if you should find that  
 [4] the government has met its burden of proving guilt beyond a  
 [5] reasonable doubt, you must render a verdict of guilty.  
 [6] Now, when you deliberate on the verdict, to  
 [7] record a verdict, it must be unanimous. If you do want to  
 [8] repeat, though, that each juror is entitled to his or her  
 [9] own opinion. You should, however, exchange views with your  
 [10] fellow jurors. That's the very purpose of jury  
 [11] deliberations, to discuss and consider the evidence and  
 [12] listen to the arguments of fellow jurors, to present your  
 [13] individual views, to consult with one another, and to reach  
 [14] an agreement based solely and totally on the evidence, if  
 [15] you can do so without violence to your own individual  
 [16] judgment.

[17] So, each of you must decide the case for  
 [18] yourself, after consideration with your fellow jurors of the  
 [19] evidence in the case, but you should not hesitate to change  
 [20] an opinion, which after discussion with your fellow jurors  
 [21] appears erroneous.

[22] However, if after carefully considering all the  
 [23] evidence and the arguments of your fellow jurors, you  
 [24] maintain a conscientious view that differs from the others,  
 [25] you are not to yield your views simply because you are

[1] outnumbered. Your final vote must reflect your  
 [2] conscientious view without of how the issue should be  
 [3] decided.

[4] So, now that I have charged you as to what the  
 [5] law is, you are about to go into the jury room to begin your  
 [6] deliberations. If during your deliberations you want to see  
 [7] any exhibits, they will be sent in to the jury room on  
 [8] request.

[9] If you want any of the testimony read, try to be  
 [10] as specific as you possibly can. If there are portions of  
 [11] testimony, or exhibits, that you want, and if we don't  
 [12] respond immediately, be patient. We are looking for exactly  
 [13] what you have asked for.

[14] Similarly, should you want to see any of the  
 [15] videotaped depositions, or any portions thereof, again, that  
 [16] will be arranged.

[17] Your request for exhibits or testimony, in fact  
 [18] any communication with the court from here on in, should be  
 [19] made to me in writing — there will be a pad in there for  
 [20] you to use — signed by the foreperson — and the foreperson  
 [21] is automatically Juror No. 1, Mr. Coleman — and given to  
 [22] one of the Marshals, who will be outside the door of the  
 [23] jury room. You will meet the Marshal in a few minutes, but  
 [24] from here on in, now that you are deliberating, all  
 [25] communications are to be through the Marshal and not with

Page 5743

[1] Mina.  
[2] If we get any questions, we will respond. Any  
[3] questions or requests, we will respond as promptly as  
[4] possible in writing or, more likely, by having you come back  
[5] to the courtroom so that I can speak to you in person.  
[6] In any event, do not tell me or anybody else how  
[7] the jury stands on the issue of the defendant's guilt until  
[8] after a unanimous verdict has been reached.  
[9] As I just mentioned, Juror No. 1 is the  
[10] foreperson responsible for signing all communications with  
[11] the court and handing them to the Marshal during  
[12] deliberations. The fact that a juror is the foreperson  
[13] imposes that duty of passing notes to me. However, the jury  
[14] should understand that the vote of the foreperson has equal  
[15] weight with that of every other person on the jury, no  
[16] greater or no less.  
[17] Finally, each of you must be in agreement with  
[18] the verdict that is announced in court. Once the verdict is  
[19] announced by the foreperson in open court, and officially  
[20] recorded, it cannot ordinarily be revoked.  
[21] Also, and I will explain it to you in a couple  
[22] minutes, we will give you a verdict sheet which is simply a  
[23] piece of paper on which you can indicate what the jury's  
[24] verdict is.  
[25] In this case there are two counts. We'll say

Page 5744

[1] Count One will give the statutory reference, you will say  
[2] guilty or not guilty; or Count Two, not guilty or guilty.  
[3] It has to be signed by the foreperson. Of course, it is  
[4] only to reflect the unanimous vote of all the jurors.  
[5] Now what I am going to do, I'm going to ask you  
[6] to stay in court for a few minutes there. A couple of your  
[7] individual problems I want to get my recollection refreshed  
[8] on and that would be very brief and we will do that outside  
[9] of your presence. I also want to get the opportunity to ask  
[10] the lawyers whether I have said anything I didn't tell them  
[11] I was going to say, or whether I forgot to say something I  
[12] did tell them I was going to say. I'll do that out of your  
[13] presence.  
[14] (Continued on next page)

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

Page 5745

[1] (At the sidebar)  
[2] THE COURT: The question at this point is did I  
[3] read the script?  
[4] MR. PUCCIO: Yes.  
[5] MS. NEILS: Yes.  
[6] MR. RITCHIN: Yes.  
[7] THE COURT: All objections on either side?  
[8] MR. RITCHIN: Yes.  
[9] THE COURT: Did defense counsel get a chance to  
[10] look at the verdict sheet?  
[11] MR. PUCCIO: I did, yes.  
[12] THE COURT: Is it okay?  
[13] MR. PUCCIO: Subject to my all my objections, it  
[14] is.  
[15] THE COURT: I'm talking about the form of the  
[16] verdict sheet. Anything wrong?  
[17] MR. PUCCIO: Yes, I mean I made, I asked for a  
[18] lesser included offense charge.  
[19] THE COURT: Yes, that objection is preserved. It  
[20] doesn't include that, and obviously you have a Rule 29  
[21] objection, and I shouldn't be giving them that verdict  
[22] charge at all. Those are preserved.  
[23] Now let's go inside. I think it is better if I  
[24] leave them in here. There is a marshal in here, and just  
[25] tell him to keep an eye on the jury. They may want to start

Page 5746

[1] deliberating no matter what I tell them if I send them  
[2] inside.  
[3] (Continued on next page)  
[4] (Pages 5747 - 5772 sealed)  
[5]  
[6]  
[7]  
[8]  
[9]  
[10]  
[11]  
[12]  
[13]  
[14]  
[15]  
[16]  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]